

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JAMES P. BUCKLAND,

Petitioner,

v.

Case No. 2:06-cv-134
HON. R. ALLAN EDGAR

CATHY BAUMAN,

Respondent.

MEMORANDUM AND ORDER

Petitioner James P. Buckland (“Buckland”), a state prisoner in the custody of the Michigan Department of Corrections, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. The habeas petition was referred to Magistrate Judge Timothy P. Greeley for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and W.D. Mich. LCivR 72.1(d).

On October 31, 2008, the Magistrate Judge submitted his report and recommendation. [Doc. No. 23]. The Magistrate Judge recommends that the habeas petition be dismissed without prejudice on the ground of failure to exhaust remedies available under Michigan state law. Petitioner Buckland has not timely filed an objection to the report and recommendation.

After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.3(b). The Court concludes that habeas petition is without merit for the reasons expressed in the report and

recommendation. The petition for writ of habeas corpus brought under 28 U.S.C. § 2254 shall be **DISMISSED WITHOUT PREJUDICE**.

If Buckland files a notice of appeal, it will be treated as an application for a certificate of appealability which shall be **DENIED** pursuant to 28 U.S.C. § 2253(c)(2) and Fed. R. App. P. 22(b)(1).

A separate judgment will enter.

SO ORDERED.

Dated: November 24, 2008.

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE